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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 MANUEL DAVID LUGO,

CASE NO. 07-CV-109 W (POR)

14
15 Plaintiff,

16 v.

ORDER GRANTING
THE DMV'S MOTION
TO DISMISS

17 GEORGE VALVERDE, as
18 DIRECTOR OF THE CALIFORNIA
19 DEPARTMENT OF MOTOR
20 VEHICLES, et al.,

21
22 Defendants.
23

24 Plaintiff Manuel David Lugo filed a civil-rights complaint against Defendant
25 George Valverde (the DMV) alleging that the DMV violated his right to procedural due
26 process under 42 U.S.C. § 1983. The DMV moved to dismiss. Because res judicata
27 precludes Lugo from reasserting a constitutional claim, and in any event, his complaint
28 fails to state a claim, the court will **GRANT** the motion.

1 **I. Background**

2 On July 24, 2005, in the early morning, Lugo called the San Diego Police after
3 another driver rear-ended his car. (Compl. ¶ 10.) When they arrived, Lugo maintained
4 that the engine was off and the emergency flashers were on at the time of the accident.
5 (Id.) Because the reporting officer observed that Lugo exhibited objective signs of
6 alcohol intoxication—Lugo had bloodshot eyes and alcohol on his breath, lacked
7 balance, and slurred his speech—the officer arrested Lugo for driving a vehicle while
8 intoxicated. (Def.'s Mem. in Supp. at 3.) Breath tests showed Lugo's blood-alcohol
9 concentration ("BAC") at 0.11 and 0.10 percent. (Id.)

10 On August 18, 2005, the DMV held a hearing before Driver Safety Officer Felicia
11 Davis, an employee of the DMV. (Compl. ¶ 12.) By statute, an "administrative per se"
12 hearing must occur before the DMV may suspend a license for driving under the
13 influence of alcohol. Prior to the hearing, Lugo requested that all available passengers
14 and percipient witnesses be permitted to testify that he was not driving. (Id.) DSO
15 Davis denied the request, limiting Lugo to two of the four witnesses he wanted. The
16 reporting officer also testified that Lugo admitted he was driving. (Id.) DSO Davis
17 credited the reporting officer's testimony, and suspended Lugo's license for four months.
18 (Id.)

19 On December 14, 2005, the DMV held a second administrative-per-se hearing
20 regarding Lugo's suspension. (Def.'s Mem. in Supp. at 4 (citing RJN, Ex. B at 1–2).)
21 DSO Davis again denied Lugo's request to allow the excluded witnesses to testify.
22 (Compl. ¶ 14.) The reporting officer again testified that Lugo admitted to being the
23 driver (Def.'s Mem. in Supp. at 4), however, he could not recall whether the parked
24 vehicle's engine was running when he arrived or who had the keys to the car. (Id.)
25 Neither the officer nor his report stated that he witnessed Lugo driving. (Compl. ¶ 10.)
26 On December 20, 2005, the DMV issued a decision upholding the written decision of
27 the first administrative-per-se hearing to suspend Lugo's license. (Id.)

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1 On August 21, 2006—over eight months later—Lugo petitioned for a writ of
2 mandate in San Diego Superior Court to overturn the suspension of his driver’s license.
3 (Compl. ¶ 18.) Lugo asserted that the DMV failed to meet its burden of proof, and
4 failed to afford him a fair hearing “under applicable standards of due process, statutory
5 and constitutional provisions.” (Def.’s Mem. in Supp. at 4.) On December 5, 2006, the
6 Hon. Eugenia Eyherabide entered a judgment denying Lugo’s petition for writ of
7 mandate to overturn the four-month suspension of his driver’s license. (*Id.* at 6.)

8 On January 8, 2007, the DMV sent a letter notifying Lugo that it would suspend
9 his California driver’s license for four months beginning on January 16, 2007. (Compl.
10 ¶ 19.) The letter stated that Lugo would be prosecuted if he failed to surrender his
11 driver’s license under California Vehicle Code § 14610. (*Id.*) The letter also stated, “If
12 you drive while your privilege is suspended or revoked you may be arrested, and if
13 convicted, you may be jailed, fined, or both. **THIS ACTION IS INDEPENDENT OF**
14 **ANY OTHER ACTION TAKEN BY THE COURT OR THIS DEPARTMENT.**”
15 (*Id.*)

16 On January 16, 2007, Lugo commenced this action for injunctive relief to
17 prevent the DMV from suspending his license. He alleged that the DMV deprived him
18 of liberty without due process under the Fifth and Fourteenth Amendments of the
19 United States Constitution. (Compl. ¶ 1.) On February 6, 2007, the DMV filed a
20 motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Def.’s
21 Mem. in Supp. at 1.)

22 23 **II. Legal Standard**

24 A motion to dismiss under Rule 12(b)(6) tests the complaint’s sufficiency. *See*
25 *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). In reviewing
26 a motion to dismiss pursuant to Rule 12(b)(6), the court must assume the truth of all
27 factual allegations and must construe them in the light most favorable to the nonmoving
28 party. *Gompper v. VISX, Inc.*, 298 F.3d 893, 895 (9th Cir. 2002). The complaint and

1 all reasonable inferences therefrom are construed in the plaintiff's favor. Walleri v. Fed.
 2 Home Loan Bank of Seattle, 83 F.3d 1575, 1580 (9th Cir. 1996). Nevertheless,
 3 conclusory legal allegations and unwarranted inferences are insufficient to defeat a
 4 motion to dismiss. Ove v. Gwinn, 264 F.3d 817, 821 (9th Cir. 2001).

5 In other words, while a complaint "does not need detailed factual allegations," it
 6 must include "more than labels and conclusions." Bell Atl. Corp. v. Twombly, 550 U.S.
 7 —, — (2007). "Factual allegations must be enough to raise a right to relief above the
 8 speculative level on the assumption that all of the complaint's allegations are true." Id.
 9 Arguments relying on conclusory legal allegations or unwarranted inferences do not help
 10 to defeat a motion to dismiss. Ove v. Gwinn, 264 F.3d 817, 821 (9th Cir. 2001).

11 Generally, the court may not consider material outside the complaint when ruling
 12 on a motion to dismiss. Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d
 13 1542, 1555 n.19 (9th Cir. 1990). It may, however, consider any documents specifically
 14 identified in the complaint whose authenticity is not questioned by the parties. Fecht
 15 v. Price Co., 70 F.3d 1078, 1080 n.1 (9th Cir. 1995). Moreover, the court may consider
 16 the full text of those documents, even when the complaint quotes only selected
 17 portions. Id. The court may also consider material properly subject to judicial notice
 18 without converting the motion into a motion for summary judgment. Barron v. Reich,
 19 13 F.3d 1370, 1377 (9th Cir. 1994) (citing Mack v. South Bay Beer Distribs., Inc., 798
 20 F.2d 1279, 1282 (9th Cir. 1986)).

21 22 **III. Discussion**

23 **A. Res judicata bars Lugo's civil-rights claims.**

24 According to the full faith and credit statute, a party may not raise a claim that
 25 another court already resolved. See 28 U.S.C. § 1738 (1996); San Remo Hotel, L.P. v.
 26 City & County of S.F., 545 U.S. 323, 336 (2005). "[Full faith and credit] has long been
 27 understood to encompass the doctrines of res judicata, or 'claim preclusion,' and
 28 collateral estoppel, or 'issue preclusion.'" San Remo Hotel, 545 U.S. at 336 (quoting

1 Allen v. McCurry, 449 U.S. 90, 94 (1980)). Federal courts must apply the law of res
 2 judicata in the state where they sit. Takahashi v. Bd. of Trs., 783 F.2d 848, 851 (9th
 3 Cir. 1986); Valley Wood Preserving, Inc. v. County of Stanislaus, 785 F.2d 751, 752
 4 (9th Cir. 1986) (citing Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81
 5 (1984)).

6 Under California law, res judicata precludes a plaintiff from litigating a claim if
 7 (1) the claim relates to the same “primary right” as a claim in a prior action, (2) the
 8 prior judgment was final and on the merits, and (3) the plaintiff was a party or in privity
 9 with a party in the prior action. Mir v. Little Co. of Mary Hosp., 844 F.2d 646, 651 (9th
 10 Cir. 1988); Trujillo v. County of Santa Clara, 775 F.2d 1359, 1366 (9th Cir. 1985).
 11 “California, as most states, recognizes that the doctrine of res judicata will bar not only
 12 claims actually litigated in a prior proceeding, but also claims that could have been
 13 litigated.” Palomar Mobilehome Park Ass’n v. City of San Marcos, 989 F.2d 362, 364
 14 (9th Cir. 1993); see Valley Wood, 785 F.2d at 754 (ruling that res judicata precluded
 15 claims because the party could have raised them in a prior action). Here, res judicata
 16 prevents Lugo from litigating his § 1983 claim against the DMV because he could have
 17 raised, and possibly did raise, constitutional claims in state court.

18
 19 ***1. Lugo’s petition claimed harm to the same primary right as his § 1983 claim.***

20 To determine the scope of a claim, California courts employ the “primary right
 21 theory.” Takahashi, 783 F.2d at 851; Trujillo, 775 F.2d at 1366. Under this theory,
 22 “the violation of one primary right gives rise to a single cause of action.” Takahashi, 783
 23 F.2d at 851 (quoting Slater v. Blackwood, 15 Cal. 3d 791, 795 (Cal. 1976)). A primary
 24 right is defined in terms of the harm suffered by the plaintiff, or the substantive right
 25 allegedly invaded—regardless of the legal theory of redress. Id. (quoting Argarwal v.
 26 Johnson, 25 Cal. 3d 932, 935 (1979)); Brown v. County of San Joaquin, 601 F. Supp.
 27 653, 657 (E.D. Cal. 1985) (citing Mattson v. City of Costa Mesa, 106 Cal. App. 3d 441
 28 (1980)); Stafford v. Yerge, 129 Cal. App. 2d 165 (1954). Thus, for the purposes of res

1 judicata, two claims constitute a single cause of action if they both seek redress for harm
2 to the same primary right. City of Simi Valley v. Sup. Ct., 4 Cal. Rptr. 3d 468, 472 (Cal.
3 Ct. App. 2003).

4 Lugo alleges that the DMV invaded his right to procedural due process by
5 suspending his driver's license without a full and fair hearing. (Compl. ¶ 1.) The U.S.
6 Constitution states that no state shall "deprive any person of life, liberty, or property,
7 without due process of law." U.S. Const. amend. XIV § 1. Lugo's driver's licence is
8 undoubtedly a property interest entitled to the safeguards of procedural due process.
9 Dixon v. Love, 431 U.S. 105, 112 (1977). Lugo sought judicial review of the
10 administrative hearing in state court because he claimed the DMV did not comport with
11 constitutional standards of procedural due process. He did not prevail.

12 Thus, the court must decide whether Lugo now claims harm to a different primary
13 right, or merely seeks redress using a different legal theory. See City of Simi Valley, 4
14 Cal. Rptr. 3d at 472. Here, Lugo seeks redress because he claims the DMV violated his
15 14th Amendment right to procedural due process. (Compl. ¶ 1.) But § 1983 only
16 provides a federal remedy for constitutional violations; it is not an independent source
17 of primary rights. 42 U.S.C. § 1983 ("Every person who . . . subjects, or causes to be
18 subjected, any citizen of the United States . . . *to the deprivation of any rights, privileges,*
19 *or immunities secured by the Constitution* . . . shall be liable to the party injured in an
20 action at law . . . for redress . . ."). During judicial review in state court, Lugo asserted
21 that he "was not afforded a fair hearing in this matter, under applicable standards of due
22 process, statutory and constitutional provisions." (Def.'s Mem. in Supp. at 4.) Because
23 § 13559 of the California Vehicle Code permitted the state court to consider the DMV's
24 constitutional authority, Lugo properly raised—or at the very least, could have raised—a
25 constitutional challenge. Therefore, Lugo cannot, regardless of the legal theory or form
26 of proceeding, bring another claim involving the same primary constitutional right.

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2. *The state-court judgment was final and on the merits.*

“A decision on a petition for writ of mandate seeking review of an administrative order is considered a final decision on the merits for res judicata under California law.” Mir, 844 F.2d at 651 (citing Trujillo, 775 F.2d at 1366); Clark v. Yosemite Cmty. Coll., 785 F.2d 781, 784 (9th Cir. 1986) (“It is well established in California that the doctrine of res judicata applies to judgments in mandamus proceedings”) (quoting Eichman v. Fotomat Corp., 197 Cal. Rptr. 612, 614 (Cal. Ct. App. 1983)). The state court could have reviewed whether the DMV exceeded its statutory and *constitutional* authority. Cal. Veh. Code § 13559. Prior to judicial review, the California Vehicle Code permits a person to seek an administrative hearing with the DMV before a hearing officer—Lugo received two hearings—where evidence may be presented prior to the date the suspension becomes effective. Cal. Veh. Code §§ 14100–14112. Though the hearing officer has the discretion to exclude cumulative evidence, this discretion is limited to the introduction of cumulative evidence similarly afforded in judicial actions. Cal. Gov. Code § 11513(f); Cal. Evid. Code, § 352; Horn v. Gen. Motors Corp., 17 Cal. 3d 359, 371 (Cal. 1976). Thus, Lugo utilized all aspects of a cohesive process culminating with a final state-court judgment on the merits. This court is not at liberty to disregard that judgment to allow Lugo to litigate his claim again. See Takahashi, 783 F.2d at 850–52.

In short, Lugo’s § 1983 claim stems from alleged constitutional defects in the DMV’s administrative-per-se hearing—defects which the state court could, and probably did, consider. Thus, the procedural-due-process claim is based on the same “primary right” as the claim that was or could have been brought in state court. Lugo only has *one* primary right to procedural due process under the 14th Amendment. See Mir, 844 F.2d at 653. He has merely presented a new legal theory of recovery: § 1983. But the state-court judgment must receive full faith and credit, so res judicata bars him from suing on that primary right a second time. See Mir, 844 F.2d at 651–52 (finding § 1983 claims barred because it was based on the same “primary right” presented in a

prior petition for writ of mandate); Clark, 785 F.2d at 786 (finding § 1983 claim for violation of due process barred where claim was based on denial hearing that was the express complaint in prior mandate proceeding); Patrick Media Group, Inc. v. Cal. Coastal Comm'n, 9 Cal. App. 4th 592, 617 (1992).

B. Even if Lugo had not already litigated his dispute with the DMV, he fails to state a claim under § 1983.

Lugo brings this suit under 42 U.S.C. § 1983 for a violation of his rights to due process and liberty under the Fifth and Fourteenth Amendments of the United States Constitution. Two threshold allegations are required to state a claim under § 1983: (1) some “person” deprived the plaintiff of a federal right, and (2) that person acted “under color of” state or territorial law. Gomez v. Toledo, 446 U.S. 635, 640 (1980). The DMV concedes that Lugo asserted the threshold § 1983 allegations. (Def.’s Mem. in Supp at 14.) Further, the DMV also concedes that the suspension of Lugo’s driver’s license affects a property interest and thus entitles him to the safeguards of procedural due process. (Id. n.6 (citing Dixon v. Love, 431 U.S. 105, 112 (1977)).)

Because § 1983 is a remedial statute, it does not create any substantive rights. Rather, it allows a party to enforce other constitutional and federal statutory rights through litigation. Here, Lugo sues under the 14th Amendment itself. Thus, the court must decide whether California’s license-suspension procedure violates the 14th Amendment, either facially or as applied against Lugo. Courts must consider three factors in procedural-due-process challenges:

[F]irst, the private interest that will be affected by official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Mathews v. Eldridge, 424 U.S. 319, 335 (1976). While Lugo’s interest in his driver’s license is undoubtedly important, the court concludes that the numerous predeprivation

1 safeguards and the state's weighty interest in removing dangerous drivers from the
 2 streets adequately protect against the slight risk of an erroneous deprivation. Therefore,
 3 the court must grant the DMV's motion to dismiss.

4 The DMV's alleged violations primarily fall under the second Mathews factor: the
 5 risk of erroneous deprivation, and the probable value of additional or substitute
 6 procedural safeguards. Lugo contends that the DMV violated his procedural-due-
 7 process rights in three ways: (1) the unlawful admission of incriminating evidence and
 8 unlawful exclusion of rebuttal evidence, (2) lack of notice informing him of the
 9 procedure to request a hearing in the notification letter, and (3) the officer presiding
 10 over the hearing was both prosecutor and judge.

11 But Lugo fails to state a procedural-due-process claim under § 1983 for three
 12 main reasons. First, in light of the government's strong interest in safety on the public
 13 roads, the hypothetical possibility that an erroneous evidentiary ruling could result in
 14 an erroneous license suspension carries little force. Second, Lugo has no standing to
 15 assert lack of notice because Lugo suffered no harm. Third, Lugo never identifies how
 16 the adjudicator's employment at the DMV contributed to the erroneous deprivation of
 17 his license—and the mere suggestion of entrenched bias against drivers again pales in
 18 comparison to the state's weighty interest in safety on the public roads. Thus, even
 19 assuming some prejudice against drivers generally or Lugo specifically, the court
 20 concludes that two predeprivation hearings culminating with independent judicial
 21 review adequately insulates against the minor risk of an erroneous deprivation.

22
 23 ***1. The risk of erroneous deprivation of Lugo's driver's license is minimal, and***
 24 ***probable values of additional or substitute procedural safeguards are minimal.***

25 *a. Lugo had available and used California's extensive procedural framework.*

26 California law entitles Lugo to a hearing within ten days of receiving notice of the
 27 administrative suspension of his license. Cal. Veh. Code § 14100; Lake v. Reed, 16 Cal.
 28 4th 448, 454 n.1 (Cal. 1997). The California Vehicle Code and Administrative

1 Procedures Act govern administrative hearings. Cal. Veh. Code §§ 14112–14112; Gov.
2 Code §§ 11500–11530. Though the administrative-hearing framework is less formal
3 than the judicial model, the procedure provides a driver with the opportunity to present
4 and rebut evidence. Cal. Gov. Code § 11425.10(a)(1). The presiding hearing officer
5 has discretion to exclude cumulative evidence. Id. § 11513(f). But this discretion is
6 limited to the introduction of cumulative evidence that is similarly afforded in judicial
7 actions. Cf. Cal. Evid. Code § 352; Horn, 17 Cal. 3d at 371. Also, the driver may seek
8 administrative review of the administrative hearing under California Vehicle Code §
9 14105. Furthermore, the DMV conducts its own review to determine whether the
10 evidence supports the suspension because the DMV bears the burden of proving
11 grounds for suspension by a preponderance of evidence. Gikas v. Zolin, 6 Cal. 4th 841,
12 846–47 (1993); Lake, 16 Cal. 4th at 456.

13 After the administrative hearings, the driver may also seek judicial review of the
14 decision through a petition for a writ of mandate to the state court. Cal. Veh. Code §
15 13559; Gikas, 6 Cal. 4th at 847. The state court is required to exercise its independent
16 judgment in reviewing whether the weight of the evidence supports the administrative
17 decision. Lake, 16 Cal. 4th at 456. The court can order the DMV to rescind the
18 suspension if it finds that the department exceeded either its constitutional or statutory
19 authority, made an erroneous interpretation of the law, acted in an arbitrary and
20 capricious manner, or made a determination not supported by the evidence in the
21 record. Cal. Veh. Code § 13559(a).

22 Under the second Mathews factor, the risk of erroneous deprivation of Lugo's
23 driver's license is minimal because of the extensive procedural framework he had
24 available and used. After his arrest for driving under the influence of alcohol, the DMV
25 held two administrative hearings to determine whether Lugo's license should be
26 suspended. (Compl. ¶¶ 12, 14.) Prior to the first administrative hearing, Lugo
27 requested that four of his witnesses be allowed to testify at the hearing on his behalf.
28 (Id. ¶ 12.) Two were permitted to testify. (Id.) After hearing their testimony, the

1 hearing officer found that the two witnesses' testimony lacked credibility and
2 contradicted Lugo's admission to the police. (Def.'s Mem. in Supp. at 4.) Thus, the first
3 administrative-hearing officer upheld Lugo's suspension. (Id.)

4 Lugo then requested departmental review under California Vehicle Code §
5 14105. (Compl. ¶ 13.) The hearing officer affirmed the ruling excluding the two
6 witnesses and added an explanation justifying her decision. (Def.'s Mem. in Supp. at 4.)
7 The second officer ultimately upheld the suspension. (Id.) Then Lugo invoked his right
8 to judicial review, where the superior court independently reviewed the evidence and
9 upheld the suspension. (Id. at 5.)

10 Thus, even assuming the hearing officer wrongfully excluded the two witnesses'
11 testimony, and that admitting the testimony would have changed the outcome, Lugo
12 cannot establish that the administrative procedure *as a whole* denied him due process.
13 With two layers of appeal—including full-fledged review in state court—California's
14 license-suspension procedure adequately safeguards against erroneous deprivations of
15 property. Further, Lugo does not anywhere suggest what additional procedural
16 safeguards would work more effectively. Consequently, the court concludes that the
17 second Mathews factor tips in the DMV's favor.

18
19 *b. The statute requiring procedural notice probably does not apply to the notification letter.*

20 As an initial matter, the court doubts it may entertain Lugo's claim to the extent
21 it challenges the notification letter. Lugo argues that the DMV violated California
22 Vehicle Code § 13353.2(c), requiring the DMV to send a "notice of the order of
23 suspension" that (1) informs the person that the driver's license will be suspended, (2)
24 states the reason and statutory grounds for the suspension, and (3) explains the right to
25 seek an administrative hearing. Gikas v. Zolin, 6 Cal. 4th 841, 846 (Cal. 1993).
26 Because Lugo initiated the administrative hearing, he tacitly admits that he suffered no
27 prejudice from the failure—and therefore, that the procedural safeguard would have
28 been of nominal additional value in protecting against an erroneous deprivation.

Furthermore, § 13353.2(c) does not conclusively apply to the letter Lugo received on January 8, 2007. By its own terms, the statute requires notice if the department “immediately” suspends a license under § 13353.2(a). Lugo, by contrast, received a letter *after* his administrative hearings and judicial review, and over one year *after* the incident. For obvious reasons, notice of the right to a hearing at that point would have been of no value whatsoever.

c. *An external procedure would add little value.*

Lugo also argues that the DMV served as both prosecutor and judge, from which the court can only infer a risk of erroneous deprivation due to entrenched bias. Implicitly, then, Lugo reasons that the DMV could use ordinary civil courts or an outside dispute-resolution agency to adjudicate license suspensions more fairly. But under Mathews, the abstract possibility of a substitute procedure does not render the existing procedure unconstitutional. Rather, the court must consider its “the probable value,” i.e., the likelihood that a different or additional safeguard would reduce the risk of an erroneous deprivation. Without some allegation that the DMV’s evidentiary rulings are systematically biased against drivers, the court cannot infer that a third-party adjudicator would often accord dispositive weight to admittedly cumulative testimony and arrive at a different outcome.

2. *California has a strong interest in removing dangerous drivers from the roads.*

An express legislative purpose of the license-suspension procedure is to ensure public safety on the roads by suspending the driving privileges of suspected drunk drivers. Cal. Veh Code § 13353.2; MacDonald v. Gutierrez, 81 P.3d 975, 977 (Cal. 2004). California courts routinely agree that public safety is a substantial state interest. See Cal. Veh. Code § 13353.2; MacDonald, 81 P.3d at 977; Komizu v. Gourley, 127 Cal. Rptr. 2d 229, 231–32 (2002). Besides specific deterrence (keeping the suspect off the roads), the statutory scheme provides general deterrence (influencing the conduct

1 of other would-be drunk drivers). Under the third Mathews factor, the court cannot
2 doubt that the state's strong interest in public safety outweighs Lugo's important—
3 though not paramount—interest in his driver's license. Komizu, 127 Cal. Rptr. 2d at
4 231 (quoting Lake, 16 Cal. 4th at 462). In Lake, the California Supreme Court upheld
5 an administrative suspension over the petitioner's objections to evidentiary rulings. The
6 court stated:

7
8 The administrative per se laws were deemed necessary due to the time lag
9 that often occurs between an arrest and a conviction for driving while
10 intoxicated or with a prohibited BAC. During this interim period, arrestees
11 who could eventually be convicted of an intoxication-related driving
12 offense were permitted to continue driving and, possibly, endangering the
13 public thereby. Moreover, without administrative per se laws, persons with
14 extremely high BAC levels at the time of arrest could escape license
15 suspension or revocation by plea bargaining to lesser crimes or entering
pretrial diversion. Thus, by providing for an administrative license
suspension prior to the criminal proceeding, the law affords the public
added protection.

16 Lugo provides no argument why California's interest in public safety should not
17 yield to Lugo's privilege to operate a motor vehicle upon evidence that he drove while
18 intoxicated. At best, Lugo alleges that more testimony would have persuaded the DMV
19 hearing officer to disregard a police officer's testimony that he admitted driving. But
20 even if the procedure did not give the hearing officer discretion to exclude evidence,
21 Lugo could not prevail. On its face, and as applied against Lugo, the California Vehicle
22 Code presents minimal risk of an erroneous deprivation, the probable value of any
23 additional or substitute procedural safeguards would be minimal, if not nonexistent, and
24 California has a strong interest in public safety requiring predictable hearing dates and
25 prompt decisions.

26 //

27 //

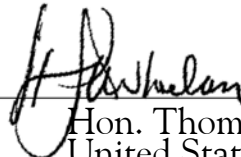
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1 **IV. Conclusion**

2 For the reasons set forth above, the court **GRANTS** the DMV's motion to
3 dismiss with prejudice.

4 **IT IS SO ORDERED.**

5
6 DATED: July 24, 2007

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8 
9 Hon. Thomas J. Whelan
United States District Judge